Fighting for the U.S. Cattle Producer!
R-CALF USA

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January 3, 2018

The Honorable Charles E. Grassley
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Mike Lee
Chairman
Senate Judiciary Committee Subcommittee on Antitrust, Competition Policy, and Consumer Rights
330 Hart Senate Office Building
Washington, DC 20510

The Honorable Amy Klobuchar
Ranking Member
Senate Judiciary Committee Subcommittee on Antitrust, Competition Policy, and Consumer Rights
825 Hart Senate Office Building
Washington, DC 20510

Dear Committee Chairman Grassley, Subcommittee Chairman Lee, Committee Ranking Feinstein, and Subcommittee Ranking Member Klobuchar:

Attached please find a formal request from R-CALF USA and its Ohio state affiliate, Buckeye Quality Beef Association, to the U.S. Senate Committee on the Judiciary (Committee) and to its Subcommittee on Antitrust, Competition Policy, and Consumer Rights (Subcommittee). We are requesting an investigation into potential antitrust and anticompetitive conduct in the northeast region of the United States following evidence of market failure that occurred contemporaneously with the 2017 delisting of the JBS-owned beef packing plant in Souderton, Pennsylvania.

As described in greater detail in our attachment, the JBS-owned Souderton plant and the Cargill-owned Wyalusing plant are the major beef packing plants in Pennsylvania, and likely throughout the entire Northeast. On October 25, 2017, the JBS plant was temporarily delisted by the U.S. Department of Agriculture (USDA) due to pest problems and, suddenly, one dominant cattle buyer exited the market.

JBS' withdrawal from the market caused immediate market failure in the region, with USDA reporting that cow prices fell \$5 to \$10 per cwt during the week ending Nov. 3, 2017. One private news service reported that cattle prices were depressed in Pennsylvania even while cattle prices were increasing in the rest of the United States.

Amid this market failure, Cargill continued procuring cattle from area cattle producers at prices it knew or should have known were artificially manipulated because there was no meaningful market competition. Cargill likely enjoyed windfall profits at the expense of both regional cattle producers and regional consumers because wholesale meat prices were increasing as cattle prices were decreasing.

This recent incident of market failure in the Northeast mirrors the market failure previously revealed in the Texas/Oklahoma/New Mexico cattle buying region where, as here, competition disappeared because there were too few competitive cattle buyers in that region to sustain a competitive marketplace for either U.S. cattle producers or U.S. beef consumers.

R-CALF USA and Buckeye Quality Beef Association believe the two identified incidents of market failure provide persuasive evidence that the United States' beef packing industry has now achieved a level of marketplace concentration that allows them to destroy competition, either individually or in concert, within several cattle marketing regions in the United States.

We respectfully request an investigation to determine, among other things, whether there are structural problems in the northeast cattle procurement market that contributed to the market failure that occurred when JBS withdrew from the market; whether JBS violated U.S. antitrust laws or engaged in any unfair or deceptive acts or practices before, during or after it withdrew from the market; and, whether Cargill violated U.S. antitrust laws or engaged in any unfair or deceptive acts or practices by procuring cattle from area cattle producers at prices it knew or should have known were well below fair market value.

R-CALF USA appreciates the Committee's and Subcommittee's April 2016 request to the Comptroller General of the United States to initiate an investigation into the cause of the 2015 nationwide collapse in cattle prices. We look forward to the results of that investigation.

Thank you for your consideration of our current request. Please let us know how we may be of further assistance in this important matter. I can be reached at 406-670-8157.

Sincerely,

Bill Bullard

Bill Bullard, CEO
R-CALF USA

Cc: The Honorable Jeff Sessions
The Honorable Sonny Perdue
Select Members of Congress

Attachment

Fighting for the U.S. Cattle Producer!

R-CALF USA

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Request by R-CALF USA and Buckeye Quality Beef Association

for a U.S. Senate Judiciary Committee Investigation

Into

Potential Antitrust and Anticompetitive Conduct in the Northeast Region of the United States Following Evidence of Market Failure that Occurred Contemporaneously with the 2017 Delisting of the JBS-owned Beef Packing Plant in Souderton, Pennsylvania.

January 3, 2018

Concentration levels in the U.S. beef packing industry are among the highest of any industry in the United States and "well above levels generally considered to elicit non-competitive behavior and result in adverse economic performance."[1] Today just four firms control 85 percent of the nation's fed cattle market.[2]

This means today's 30,219 remaining cattle feeders[3] (whose numbers have declined a staggering 73 percent during the past two decades[4]) have no choice but to market 85 percent of their nearly 24 million head of fed cattle[5] to just four market gatekeepers – Tyson, JBS, Cargill, and National Beef.

For many years, the beef packing lobby had convinced Congress, the Department of Justice (DOJ) and the U.S. Department of Agriculture (USDA) that four gatekeeping packers were sufficient to ensure robust competition in the U.S. cattle market. Decision-makers believed this false propaganda even while the volume of fed cattle in the price-discovering cash market was disappearing at the alarming rate of nearly 5 percentage points each year throughout the decade,

[1] A Review of Causes for and Consequences of Economic Concentration in the U.S. Meatpacking Industry, Clement E. Ward, Current Agriculture Food and Resource Issues, 2001, at 1.
[2] *See* 81 Fed. Reg., at 92,575, col. 3 (Dec. 20, 2016).
[3] Cattle on Feed, U.S. Dept. of Agriculture (USDA) National Agricultural Statistics Service (NASS), (Feb. 24, 2017), at 15, available at http://usda.mannlib.cornell.edu/usda/nass/CattOnFe//2010s/2017/CattOnFe-02-24-2017.pdf.
[4] Compare 2016 data, *supra*, fn. 3 to 1996 data published in Cattle Final Estimates 1994-1998, USDA NASS (January 1999), available at http://usda.mannlib.cornell.edu/usda/nass/SB989/sb953.pdf.
[5] *See* Cattle on Feed, *supra*, fn. 3.

2006-2016.[6] Also during this same period the spread between prices producers received for their cattle and prices consumers paid for their beef was increasing at nearly the same 5 percentage-point rate[7] – a clear indication that highly concentrated beef packers were exploiting producers at one end of the beef supply chain and consumers at the other.

In 2010 lawmakers and regulators heard uncontroverted testimony regarding a study in the Texas/Oklahoma/New Mexico fed cattle procurement region that revealed, *inter alia*, that during 18 of 52 weeks the region had only one packer bidding on cattle and for 4 of those 52 weeks there were none.[8] Despite this shocking testimonial regarding the utter lack of competition during 42 percent of the year in one of the nation's largest cattle procurement regions, lawmakers and regulators firmly resisted any efforts to enforce U.S. antitrust laws or to otherwise prohibit anticompetitive conduct in the U.S. cattle market.

An economic analysis conducted by C. Robert Taylor[9] of the data collected by that study reveals that during a period of nearly four years, the buyer power index for purchases of cattle in that region for all but two weeks during that four-year period was significantly higher than the threshold level the DOJ generally considers a potential threat to competition.[10] Moreover, his analysis indicated that the elimination of one of four cattle buyers would be expected to reduce the weekly value of fed cattle, when compared to the previous week's value, by about $10 per head. If another buyer were eliminated, the decline in cattle values would be about $15 per head. Then, if yet another buyer were eliminated, leaving just one, as had occurred for 18 weeks during the 52 weeks reported above, the value of cattle would be expected to decline by about $22 per head. Finally, when the number of buyers is reduced to zero, as it was for 4 of 52 weeks in the study, the week-to-week devaluation of cattle would be about $30 per head.[11]

And so it is in today's highly concentrated meatpacking sector that if a single cattle buyer steps out of the market, for whatever reason, financial harm will inevitably accrue to United States' independent family farmers and ranchers who raise and sell cattle. This may well explain why USDA's historical data show that the average return to U.S. cattle feeders from January 2000 through October 2017 was, alarmingly, a negative $19.37 per head per month during the entire 18-

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[6] LMR [Livestock Market Reporting] Purchase Type Breakdown by Region, National 2005-2016, USDA Agricultural Marketing Service (AMS) Livestock, Poultry & Grain Market News.
[7] *See*, *e.g.*, Choice Beef Values and Spreads and the All-Fresh Retail Value, USDA Economic Research Service (ERS), available at https://www.ers.usda.gov/data-products/meat-price-spreads/ (showing the total annual farm-to-retail spread from 2011 to 2016. Archived data for 2006-2010 is available from the author).
[8] *See* Statement of Bruce Cobb, General Manager of Consolidated Beef Producers, *Public Workshops Exploring Competition Issues in Agriculture: Livestock Workshop Before the U.S. Department of Justice and U.S. Department of Agriculture*, 210-12 (2010), *available at* http://www.justice.gov/atr/public/workshops/ag2010/colorado-agworkshop-transcript.pdf.
[9] C. Robert Taylor, ALFA Eminent Scholar and Professor, Agricultural Economics and Rural Sociology Faculty, Auburn University, Alabama.
[10] *See* Addendum A, Chart 1, C. Robert Taylor.
[11] *See* Addendum A, Chart 2, C. Robert Taylor.

year period,[12] which most certainly was a deciding factor that drove 73 percent of our nation's farmer-feeders out of business since just before the start of that period.[13]

The forces that allowed, indeed facilitated, the drastic decline in the number of competitive marketing outlets for United States' independent cattle farmers and ranchers constitute the Washington, D.C., "swamp" that President Trump vowed to drain. Unfortunately, however, and as described below, no draining of the swamp has occurred and United States' independent cattle farmers and ranchers continue to be harmed by the status quo, *i.e.*, the Administration's regulatory indifference to the ongoing market failure in the U.S. cattle market, which is, arguably, the nation's most important agricultural market because it is the nation's largest agricultural market in terms of cash receipts.[14]

Very recently, beginning in October 2017, United States' hard working, independent cattle farmers and ranchers in the Northeast suffered artificially low cattle prices due to this indifference to our nation's broken cattle market.

Shrouded in secrecy, on October 25, 2017, the USDA Food Safety and Inspection Service (FSIS) delisted the JBS-owned Souderton, Pa., beef packing plant from the agency's list of federally inspected establishments.[15] Reports state the reason for the delisting was pest sightings.[16] Locals who contacted this author said those pests were rats.

On November 1, 2017, an R-CALF USA and Buckeye Quality Beef Association (BQBA) member in Ohio called the R-CALF USA office to inquire as to whether the JBS plant in Souderton had been closed for the past couple days. The only public information R-CALF USA could find regarding recent events at the Souderton plant was an October 18, 2017 news report about an ammonia leak at the plant.[17] The R-CALF USA/BQBA member reported that the JBS cattle buyer was not buying cattle at local livestock auction yards and cattle prices were suffering as a result.

It does not appear the public was informed about the JBS plant closure until about two weeks after the fact when, on November 8, 2017, for example, several news articles from Reuters,

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[12] *See* Addendum B, Chart 3, R-CALF USA.
[13] *Supra*, fn. 4.
[14] *See* Cash Receipts by Commodity, 2010-2017F, USDA Economic Research Service (the average cash receipts from sales of cattle and calves for the past five years was more than $72 billion per year, considerably higher than the second-place commodity, corn, at about $56 billion), available at https://data.ers.usda.gov/reports.aspx?ID=17832.
[15] *See* Souderton Packer Plans to Reopen, Phillip Gruber, Lancaster Farming (Nov. 10, 2017), available at http://www.lancasterfarming.com/market_news/souderton-packer-plans-to-reopen/article_a1c050ba-c629-11e7-92b2-dfa678a82453.html.
[16] *See id*.
[17] Ammonia Leak at Souderton Plant, News Director, WNPV AM 1440 (Oct. 18, 2017), available at http://wnpv1440.com/2017/10/18/ammonia-leak-souderton-plant/.

Meatingplace and other sources reported that the Souderton, Pa., plant was temporarily shut down due to pests.[18]

According to JBS' website, its Souderton, Pa., plant is the largest beef packing facility east of Chicago, Ill.[19] News reports state the Souderton plant slaughters about 1,200 cows and 1,200 fed cattle per day and accounts for about 2 percent of the nation's daily cattle slaughter capacity.[20] Also operating in Pennsylvania is a Cargill-owned beef packing plant in Wyalusing, Pennsylvania. Cargill's Wyalusing plant and JBS' Souderton plant are considered the two main competitors for slaughter-ready cattle in Pennsylvania.[21] Cargill's Wyalusing plant slaughters about 1,500 head per day, accounting for about 1 percent of the nation's daily cattle slaughter capacity.[22]

On Monday, October 23, two days before the JBS Souderton plant was delisted, the USDA-Ag Market News (Market News) reported Pennsylvania livestock auction results for the week ending Friday, Oct. 20, 2017 and stated, "Across Pennsylvania this week, Slaughter cattle prices remained mostly steady for the second week in a row."[23] Strangely, Market News did not issue a report for the week during which the JBS Souderton plant was shut down, the week ending Friday, October 27, 2017. The next consecutive report was dated November 6, 2017, which covered the week ending Friday, November 3. That report stated rather ominously:

> Across Pennsylvania this week, we saw what one major packer being out of the market can do to receipts and prices. Most sale barns asked producers not to bring in slaughter cows so as not to flood the market. Cow prices dropped but not like anticipated . . . Choice steers averaged 104.69/cwt or 1.44/cwt lower than last week . . . Choice heifers averaged 102.50/cwt or .56/cwt lower than last week . . . Slaughter cows were quoted 5.00-10.00 lower on another week without one of the major cow buyers.[24]

In the next week's report, for the week ending Friday, Nov. 13, 2017, the USDA stated:

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[18] *See, e.g.*, Pests Force Temporary Shutdown of JBS Pennsylvania Plant, Theopolis Waters, Reuters (Nov. 8, 2017), available at https://in.reuters.com/article/us-usa-jbs-beef/pests-force-temporary-shutdown-of-jbs-pennsylvania-beef-plant-idUSKBN1D8379; *see also:* JBS USA halts production at Pa. beef plant (updated), Tom Johnston, Meatingplace.com (Nov. 8, 2017), available at http://meatingplace.com/Industry/News/Details/76461?loginSuccess.

[19] Where We Are, JBS Website, available at https://jbssa.com/about/locations/.

[20] *See, e.g.*, Pests Force Temporary Shutdown of JBS Pennsylvania Plant, *supra*, fn. 18.

[21] *See* Souderton Packer Plans to Reopen, *supra*, fn. 15.

[22] *See* Cargill Locations, Wyalusing, Pa., available at https://www.cargill.com/careers/locations/wyalusing-pa (calculation based on a total daily slaughter capacity in the U.S. of 138,000 head, *see* Pests Force Temporary Shutdown of JBS Pennsylvania Plant, *supra*, fn. 18).

[23] Pennsylvania Weekly Livestock Summary for week ending Friday, Oct. 20, 2017, Report No. QA_LS155, USDA-Ag Market News (Oct. 23, 2017), available at https://search.ams.usda.gov/mndms/2017/10/QA_LS15520171023.TXT.

[24] Pennsylvania Weekly Livestock Summary for week ending Friday, Nov. 3, 2017, Report No. QA_LS155, USDA-Ag Market News (Nov. 6, 2017), available at https://search.ams.usda.gov/mndms/2017/11/QA_LS15520171106.TXT.

> Across Pennsylvania this week, as we continue to have one major packer out of the market it appears things have at least slowed. Receipts increased and prices, for the most part at least, have slowed their descent. . . Slaughter cows were quoted steady to 5.00 lower on another week without one of the major cow buyers.[25]

The final report covering the period during which the JBS Souderton plant was closed was issued the week ending November 17, 2017. In that final report the USDA stated:

> Across Pennsylvania this week, as the week begins we are still without one major packer but by mid-week they are back in the market. While things did not immediately return to 'normal' at least the downhill slide was slowed (emphasis in the original).[26]

The USDA reports indicate that JBS' absence from the Pennsylvania cattle market from October 25 through midweek of the week ending November 17 caused a serious market disruption – a market failure - with cow prices being reduced as much as $15.00 per cwt. This equates to a loss to United States' cattle producers of about $150 per head of cattle sold, an amount that could be a deciding factor regarding producer profitability or insolvency.

At least one private news service substantiated the causal effect that JBS' withdrawal from the market had on cattle prices by reporting that, "Prices were depressed in Pennsylvania even as prices were rising in the rest of the country."[27]

Indeed, in its National Slaughter Cattle Summary report for the week ending November 3, 2017, when cow prices dropped $5 to $10 per cwt in Pennsylvania, the Market News reported that on a national basis, "Slaughter cattle on a live basis in all major feeding regions traded 6.00-8.00 higher," while "[s]laughter cows and bulls sold mostly 1.00-2.00 lower, with exception of The Southeast being steady to 2.00 higher."[28] The next week, when slaughter cows were reported steady to $5.00 lower in Pennsylvania, slaughter cows on a national level were reported as steady to $2.00 higher.[29] During the week that JBS reopened its Souderton plant and the USDA described

[25] Pennsylvania Weekly Livestock Summary for week ending Friday, Nov. 13 [*sic*], 2017, Report No. QA_LS155, USDA-Ag Market News (Nov. 13, 2017), available at https://search.ams.usda.gov/mndms/2017/11/QA_LS15520171113.TXT.
[26] Pennsylvania Weekly Livestock Summary for week ending Friday, Nov. 17, 2017, Report No. QA_LS155, USDA-Ag Market News (Nov. 20, 2017), available at https://search.ams.usda.gov/mndms/2017/11/QA_LS15520171120.TXT.
[27] *See* Souderton Packer Plans to Reopen, *supra*, fn. 15.
[28] National Slaughter Cattle Summary – Week Ending November 3, 2017, Report No. KO_LS850, USDA-OK Dept of Ag Market News (Nov. 3, 2017), available at https://search.ams.usda.gov/mndms/2017/11/KO_LS85020171103.TXT.
[29] National Slaughter Cattle Summary – Week Ending November 10, 2017, Report No. KO_LS850, USDA-OK Dept of Ag Market News (Nov. 9, 2017), available at https://search.ams.usda.gov/mndms/2017/11/KO_LS85020171109.TXT.

the Pennsylvania cow market as one in which "at least the downhill slide was slowed," slaughter cows on a national level were selling steady to $3.00 higher.[30]

Based on the forgoing data alone, a back-of-the-envelope, conservative rough estimate of the per hundredweight loss that cattle producers experienced as a result of the JBS Souderton plant's closure would be a range from perhaps $5 to $15 per cwt. This roughly equates to a per head loss in the range of $50 to $150.

If Cargill's Wyalusing plant, which reportedly slaughters 1,500 cattle per day, was the beneficiary of these cheaper cattle, then it likely benefited from $75,000 to $225,000 per day by exploiting the losses producers suffered as a direct result of the lack of competition for their cattle during the three weeks or so that the JBS Souderton plant was out of the market.

That Cargill enjoyed a windfall from purchasing devalued cows in the region appears highly likely given the wholesale value of cow meat on the East Coast increased from $213.69 per cwt in September to $214.50 per cwt in October to $217.75 in November.[31] National wholesale Choice boxed beef prices from fed cattle also experienced month-to-month increases during the same period, increasing from $192.79 per cwt to $198.65 per cwt to $209.08 per cwt, respectively.[32]

The circumstances surrounding the significant reduction in competition that occurred in Pennsylvania and the surrounding area when JBS withdrew from the market for a period of about three weeks should be subject to a thorough and probing investigation to determine if JBS and/or Cargill violated U.S. antitrust laws or engaged in any unfair or deceptive practices. Specifically, an investigation should be initiated to determine:

1. Did a structural problem in the northeast cattle procurement market contribute to the market failure that occurred during JBS' temporary market absence?
2. Given that JBS has now demonstrated it has the capability to manipulate the market simply by withdrawing from the market, has JBS previously manipulated the market through strategic, partial withdrawals from the market?
3. Did JBS violate U.S. antitrust laws or engage in any unfair or deceptive acts or practices by not properly or timely informing livestock sellers that it would be withdrawing from the market and explaining to them that such withdrawal would be expected to reduce the value of their livestock?
4. Did JBS notify Cargill that it would be withdrawing from the marketplace and, if so, what did each packer agree to do?

[30] National Slaughter Cattle Summary – Week Ending November 17, 2017, Report No. KO_LS850, USDA-OK Dept of Ag Market News (Nov. 17, 2017), available at https://search.ams.usda.gov/mndms/2017/11/KO_LS85020171117.TXT.
[31] *See* Wholesale meat, poultry, and egg prices, USDA Economic Research Service (ERS), available at https://www.ers.usda.gov/data-products/livestock-meat-domestic-data/livestock-meat-domestic-data/#WholesalePrices.
[32] *Id.*

5. Did JBS' withdrawal from the marketplace create for Cargill a three-week monopoly in the cattle market in violation of the Packers and Stockyards Act?
6. Did Cargill unlawfully exploit area cattle producers by procuring their cattle at prices Cargill knew were well below fair market value?
7. Could this incident of market failure have been avoided if DOJ had blocked the 2008 merger between JBS and Smithfield Beef Group?
8. What impact did this incident of market failure have on the price of retail beef that originated in the Souderton and Wyalusing beef packing plants?
9. What was the overall economic impact on area cattle producers resulting from this incident of market failure?
10. Are cattle producers in the Texas/Oklahoma/New Mexico marketing region being continually subjected to periods of no meaningful competition as they were just prior to 2010 and as producers in the Northeast were last fall?
11. What are the expected economic consequences if another plant owned by any one of the four largest beef packers in other regions of the United States is temporarily or permanently shuttered for any reason and what protections are available to independent U.S. cattle producers from such consequences?

R-CALF USA and Buckeye Quality Beef Association greatly appreciate your consideration of this important request and we stand ready to assist you in an investigation into the market failure that has occurred in our U.S. cattle industry. I can be reached at 406-670-8157.

Sincerely,

Bill Bullard

Bill Bullard, CEO
R-CALF USA

ADDENDUM A

CHART 1

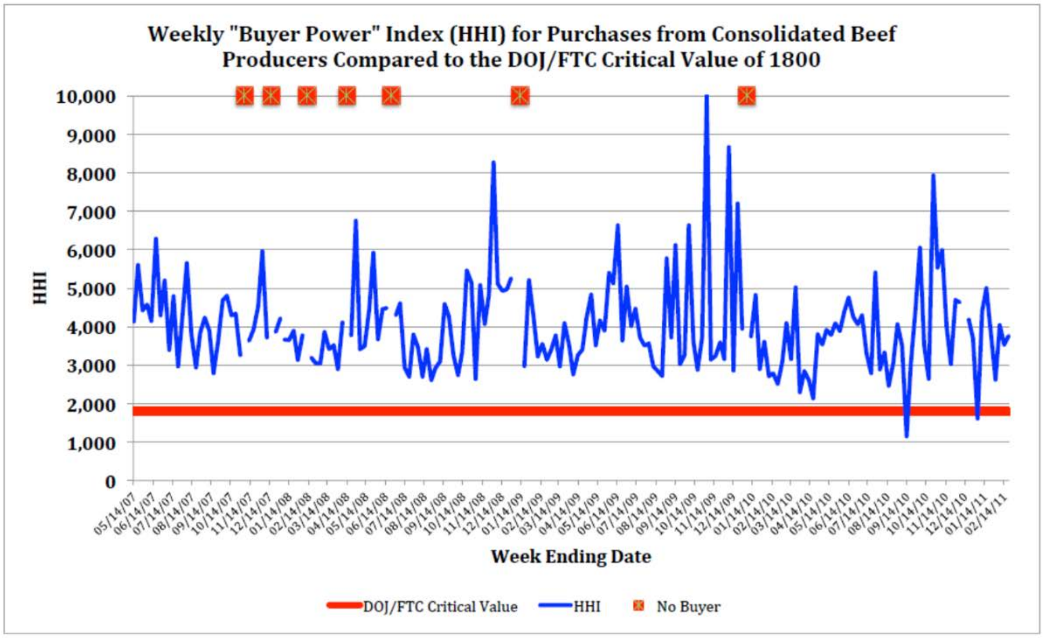
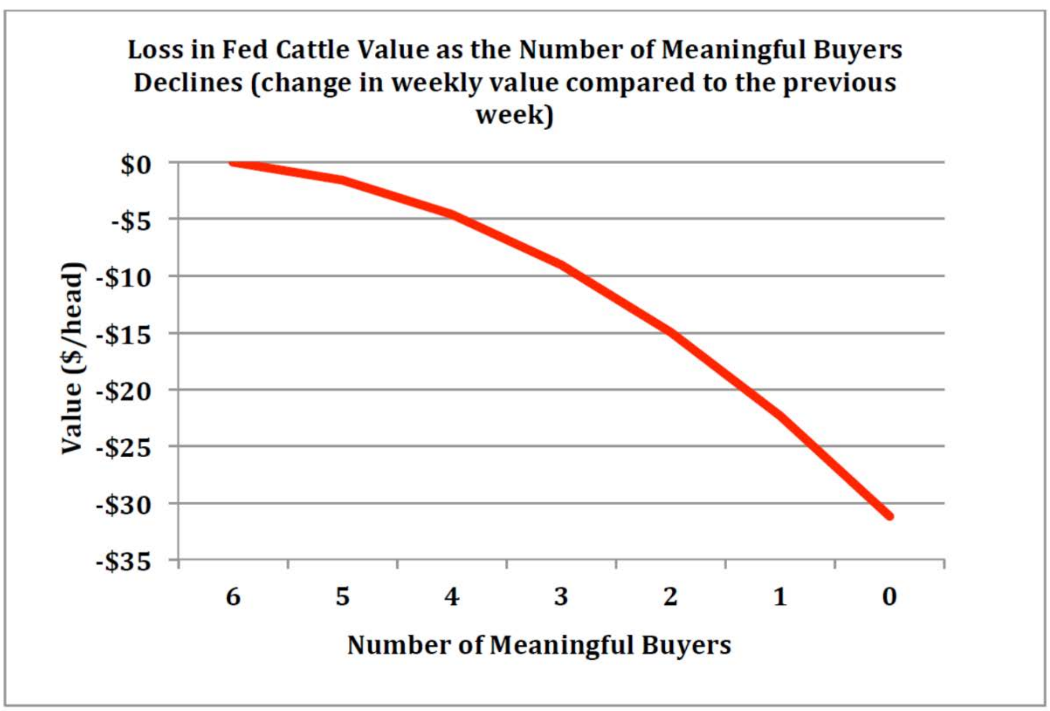
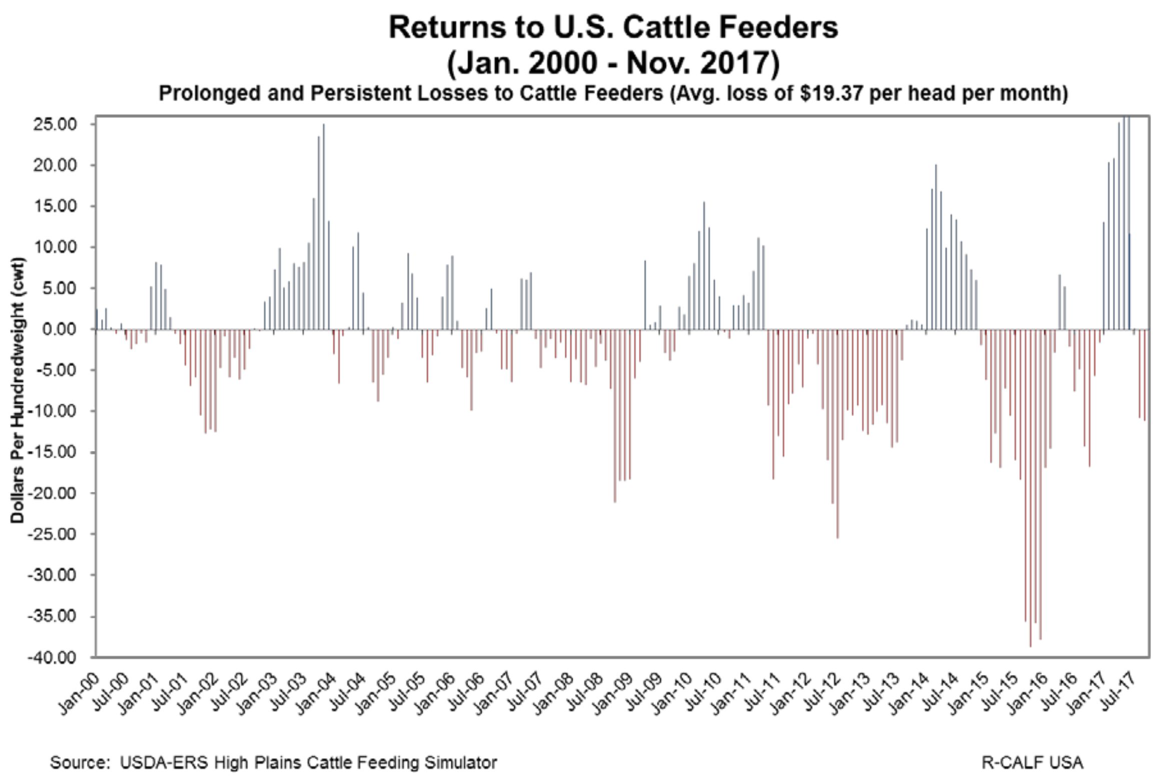


CHART 2



ADDENDUM B


Returns to U.S. Cattle Feeders
(Jan. 2000 - Nov. 2017)
Prolonged and Persistent Losses to Cattle Feeders (Avg. loss of $19.37 per head per month)
Dollars Per Hundredweight (cwt)
25.00
20.00
15.00
10.00
5.00
0.00
-5.00
-10.00
-15.00
-20.00
-25.00
-30.00
-35.00
-40.00
Jan-00 Jul-00 Jan-01 Jul-01 Jan-02 Jul-02 Jan-03 Jul-03 Jan-04 Jul-04 Jan-05 Jul-05 Jan-06 Jul-06 Jan-07 Jul-07 Jan-08 Jul-08 Jan-09 Jul-09 Jan-10 Jul-10 Jan-11 Jul-11 Jan-12 Jul-12 Jan-13 Jul-13 Jan-14 Jul-14 Jan-15 Jul-15 Jan-16 Jul-16 Jan-17 Jul-17
Source: USDA-ERS High Plains Cattle Feeding Simulator
R-CALF USA